UNITED STATES *v.* SPRAGUE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

No. 606. Argued January 21, 1931.—Decided February 24, 1931.

1. The Eighteenth Amendment was by lawful proposal and ratification made a part of the Constitution. Pp. 730–734.
2. Article V, in its provision that proposed amendments shall become part of the Constitution when ratified by the legislatures of three-fourths of the several States or by conventions in three-fourths thereof, "as the one or the other mode of ratification may be proposed by the Congress," plainly and without ambiguity places the choice between these two modes in the sole discretion of Congress, and cannot by construction be read as requiring that changes detracting from the liberty of the citizen, distinguished from changes in the character of federal means or machinery, shall be referred to conventions. P. 730.
3. The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition. P. 731.
4. The fact that an instrument drawn with such meticulous care, and by men who so well understood how to make language fit their thought, does not contain any phrase limiting the exercise of discretion by the Congress in choosing one or the other alternative modes of ratification, is persuasive evidence that no qualification was intended. P. 732.
5. Article V does not purport to delegate any governmental power to the United States, nor to withhold any from it; it is a grant of authority by the people to Congress, and not to the United States; Congress functions as the delegated agent of the people in choosing the one or the other method of ratifying proposed amendments to the Constitution. P. 733.
6. The Tenth Amendment added nothing to the Constitution as originally ratified, and lends no support to the contention that the people did not delegate this power to Congress in matters affecting their own personal liberty. P. 733.
7. The fact that several of the other Amendments (notably the Thirteenth, Fourteenth, Fifteenth, Sixteenth, and Nineteenth),

which touch rights of the citizens, were ratified by state legislatures, weighs against the argument that that mode was erroneously followed in the case of the Eighteenth Amendment. P. 734.

44 F. (2d) 967, reversed.

APPEAL, under the Criminal Appeals Act, from a judgment quashing an indictment based on the National Prohibition Act.

Solicitor General Thacher, with whom *Assistant Attorney General Youngquist* and *Messrs. Robert P. Reeder, John J. Byrne, Mahlon D. Kiefer,* and *Erwin N. Griswold* were on the brief, for the United States.

The language of Article V is clear and free from ambiguity; there is no room for the construction adopted by the court below. The words of the Constitution are to be taken in their obvious sense, and to have a reasonable construction. *Pollock* v. *Farmers' Loan & Trust Co.,* 158 U. S. 601, 618–619; *Lake County* v. *Rollins,* 130 U. S. 662, 670. This Court has said: "The language of the article is plain, and admits of no doubt in its interpretation." *Hawke* v. *Smith, No. 1,* 253 U. S. 221, 226. See *Dodge* v. *Woolsey,* 18 How. 331, 348. Furthermore, substantially the present argument was presented in the *National Prohibition Cases,* 253 U. S. 350, where it was held that the Eighteenth Amendment, "by lawful proposal and ratification, has become a part of the Constitution." And see *Hawke* v. *Smith, No. 2,* 253 U. S. 231; *Dillon* v. *Gloss,* 256 U. S. 368.

The precise question whether the Eighteenth Amendment is void because not ratified by conventions in the States, was presented in the *National Prohibition Cases* in the brief on behalf of the State of New Jersey, the brief of Rhode Island, and certain briefs of *amici curiae*; also, the bill of complaint of New Jersey.

While differing in form, the arguments made in the National Prohibition Cases and those made here all rest on

the proposition that the character of the proposed amendment determines the mode of ratification, and are alike disposed of by the holding in those cases that the Eighteenth Amendment was lawfully proposed and ratified.

The Articles of Confederation proposed by the Continental Congress were submitted to and ratified by the legislatures and not by conventions in the States (Journals of Continental Congress IX, 907, 932), and these Articles could only be amended in the same manner (Article XIII). In several of the States, constitutions had been adopted by the legislatures without submission to the people. This was true in South Carolina, Vermont, and Virginia. Thorpe, Constitutions & Charters, VI, 3241, 3248, 3737, 3749; VII, 3812; Pulliam, The Constitutional Conventions of Virginia, 13; Nevins, The American States During and After the Revolution, 128. In Massachusetts and in New Hampshire, constitutions had been submitted to town meetings for ratification. Nevins, *supra,* 183; S. E. Morrison, Massachusetts Constitution of 1780, Proceedings of Massachusetts Historical Society for 1917, p. 400. In no other State prior to 1789 had a constitution been submitted to popular vote. Nevins, *supra,* 128, 129. In five of the States the constitutions provided for amendment by conventions (Pennsylvania, Vermont, Georgia, Massachusetts, and New Hampshire); four had no provisions for amendment (New Jersey, New York, North Carolina, and Virginia), and three provided for amendment by legislative action (Delaware, Maryland, and South Carolina).

The debates in the Federal Constitutional Convention show that the methods for ratification and for amendment of the Constitution were carefully distinguished. Ratification as provided in Article VII was to be by state conventions, but it was left for Congress to determine whether amendments proposed should be ratified by state legislatures or state conventions. And see No. 85,

The Federalist; Remarks of Gerry in the First Congress, 1 Annals of Congress, 716.

An argument of great weight is found in the practical construction of Article V by Congress since the adoption of the Constitution. Nineteen Amendments to the Constitution have been adopted; and at least five additional Amendments have been proposed by Congress. All of these were referred to the legislatures and not to conventions. Of the Amendments, certainly the Thirteenth, and apparently the Sixteenth and Nineteenth, operated to grant powers to the Federal Government which had formerly been reserved to the States. The proposed Child Labor Amendment was of the same type. The Fourteenth Amendment imposed serious restraints upon the powers expressly reserved under the Tenth Amendment. We are not aware that the action of Congress in proposing the legislative mode of ratification has ever been challenged except in the case of the Eighteenth Amendment.

Messrs. Julius Henry Cohen and *Selden Bacon,* with whom *Messrs. Frederic M. P. Pearse, Daniel F. Cohalan, Kenneth E. Dayton, Leslie J. Tompkins, George H. Williams,* and *Furton A. Zorn* were on the brief, for appellees.

The meaning of any part of the Constitution is to be determined by the purpose and intent of those who framed and adopted it and in the light of the instrument as a whole. The real intent of the provisions of the Constitution, when ascertained, controls over the literal sense of the words and the terms employed. *Juilliard* v. *Greenman,* 110 U. S. 421, 439; *Legal Tender Cases,* 12 Wall. 457; *Gibbons* v. *Ogden,* 9 Wheat. 1, 188, 189; *Prigg* v. *Pennsylvania,* 16 Pet. 539, 610, 611; *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 721. In many instances the literal wording has been disregarded. *Popovici* v. *Agler,* 280 U. S. 379, 383; *Virginia* v. *Tennessee,* 148 U. S. 503,

517–518; *Collector* v. *Day*, 11 Wall. 113, 127; *Ex parte Grossman*, 267 U. S. 87, 108–109; *Ex parte Wells*, 18 How. 307, 311; *Dillon* v. *Gloss*, 256 U. S. 368, 371; *Ex parte Yarbrough*, 110 U. S. 651, 658; *South Carolina* v. *United States*, 199 U. S. 437, 451.

The provision in Article V for ratification by legislatures or conventions "as the one or the other mode of ratification may be proposed by the Congress" is no more to be construed literally than these other provisions of the Constitution, if it appears clearly that such a literal construction is inconsistent with the declarations, purpose and intention of those who framed and adopted the Constitution, and with the fundamental theory and structure of our Government, and the general aim and purpose of the instrument declared in the Preamble.

It is a fundamental concept of our system that all sovereignty ultimately resides in the people and that the United States in its existing form could have been created only by consent of the people and not by action of the States in their corporate capacities. The ultimate sovereignty in every State lies also in the people. *McCulloch* v. *Maryland*, 4 Wheat. 316, 402, 405 (see also Argument of Pinckney, *ibid.* 377); *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 324, 325; *Barron* v. *Baltimore*, 7 Pet. 242, 247, 249–250; *Keith* v. *Clark*, 97 U. S. 454, 475–476; in the Constitutional Convention, 5 Elliot's Deb., 199, 352–356; 1 Farrand, 122–123, 126–127; The Federalist, XXXIX, XLIII, XLIX; state conventions, 2 Elliot, 457–458; 4 *id.*, 328; First Congress, 3 Farrand, 374. Such powers as those purported to be conferred upon the United States by the Eighteenth Amendment could, in the original Constitution, have been granted only by the people themselves acting through conventions. The States and their legislatures would not have been competent to make such a grant.

When it was desired to form a true nation, distinguished from a Confederation or League, what grants or provisions had to be included for the creation of that nation, and whence were these elements to be derived?

(1) There must be a framework of the new government, a machinery through which the powers to be given to it would function. Its creation was within the power of the States, and of the legislatures as their representatives. It was precisely what they had done in the formation of the Confederation.

(2) It was necessary to surrender to the new government certain rights which belonged to the States, as such. These are illustrated by the provisions of Article IV of the Articles of Confederation, e. g., the agreement that the inhabitants of each State should be entitled to all the privileges and immunities of citizens of the several States, etc.

(3) In order that it might become an indissoluble Union and a nation, it was necessary that the assent of the people of the States be secured. They alone were competent to transform the federation into a nation, and they alone, in their several States, had the power to bind future legislatures so that they could not undo the bond. Thereafter the States and legislatures would themselves be competent to ratify amendments which affected merely the framework or machinery of government (and not its powers), or surrendered the rights of the States as such.

(4) It was essential that the new national government should have power to operate directly upon the people themselves and upon their rights and property. The Confederation did not possess this power. The legislatures were not competent to grant to a new nation the right for example, to levy taxes directly upon their inhabitants.

The same lack of power ran through the entire Confederation. To procure these direct powers over the people it was necessary to go to the people themselves.

The purported grant of power contained in the Eighteenth Amendment is of this class.

(5) There is a fifth class of provisions made necessary by reason of this grant of direct governmental power over the people—those which safeguard the people from usurpation and tyranny by the new national government after the grant to it of direct power over them. As a result of this fear the first ten amendments—the "Bill of Rights"—were demanded and adopted. Provisions of this kind could be adopted by legislatures. There were in them no grants of power over the people.

It must be evident that, unless there were express provision to the contrary, the residuum of powers remained with those who originally possessed them, States or the people, as the case may be. If no provision for amendment were made in the Constitution, conferring upon the States or legislatures the future right to grant powers over the people, then for new powers over the people the national government must resort again to the people themselves.

Legislatures and conventions were not equally representative of the people. The legislatures represented the States alone; the conventions represented the people, and, indeed, for the purpose of ratification were the people. There was a profound distrust of legislatures, a consistent assertion that they were not competent to bind the people, and an unwillingness to trust the people's right to their action. Chief Justice Hughes, New York State Bar Association Bulletin, October, 1930, p. 433; Jameson, The Constitutional Convention, pp. 11–13; Ford, Essays on the Constitution, 139–140; Letters of a Landholder, I; 5 Elliot's Deb., 161, 163, 352–356, 364; 1 Farrand, pp. 122, 123, 126–127, 317, 325, 326; The Federalist, No. XXXIX, No. XLIII, No. XLIX.

The face of the convention record itself shows that the final form of Article V was never intended so to be read as to make the legislatures competent to grant to the United States new and direct powers of government over the people or their rights, or to enable Congress to choose the legislatures as agents for that purpose.

To ascertain the true significance of Article V the debates on the provision for amendment must be read in their entirety, and, furthermore, they must be read in connection with the debates on the provision for ratification of the Constitution itself, because these two discussions ran side by side throughout the convention, and the principles which control one are very pertinent to the meaning of the other. 5 Elliot's Deb., pp. 126–132, 157–158, 182–183, 189–190, 195, 199, 352–356, 374–376, 376–381, 498, 499–502, 530–534, 541, 551–553.

To those who framed the Constitution, the rights of the States as such and the rights of the people were two distinct and different things. Throughout their debates they had two objects foremost in their minds. First, to create an effective national government, which should avoid the weaknesses of the Confederation, and secondly, to protect the people and their rights from usurpation and tyranny by government. States' rights and people's rights were to be kept separate and distinct. And yet, Article V, construed literally, might lead to the result that the safeguards and the protection theretofore afforded to the people and their individual rights and liberties were placed forever beyond their control and within the domination of the legislatures of the States, whom they distrusted, and against which they so carefully guarded themselves.

If the Article be read in the light of the proceedings of the convention as a whole, its reasonable meaning cannot be doubted—that it provided alternative forms indeed, but alternatives to be used each in its proper sphere, well understood and well defined, which Congress was to

select, not as a matter of discretion, but purely as a ministerial or administrative act.

The view that Article V was never intended to enable legislatures to delegate to the United States new direct powers of government over the people is confirmed by reference to, and indeed is the only view consistent with, the Preamble and the general spirit and purpose of the instrument. And that view was publicly urged in order to secure adoption of the Constitution. 3 Farrand, p. 374; 5 Elliot's Deb., 127, 162, 355, *et passim.*

The great Federalist leaders had no conception that they had, by the particular language of Article V placed all individual constitutional rights, guarded in almost every State from any interference by the state legislatures, at the mercy of the legislatures of other States. They asserted that these rights were fully guarded by the facts that the new government would have only specifically delegated powers, and that the people were the recognized source from which alone further powers over themselves and their rights could come. 2 Elliot's Deb., pp. 434–435, 436, 443–444, 453–455, 456–458, 478–479, 497–498, 502, 523; *id.* p. 230; The Federalist, LXXXIV; 2 Elliot's Deb., pp. 78, 87–88, 93, 141, 162; 1 Annals of Cong. 433, 438–439, 706, 746; *id.* pp. 732–733, 758–759; *id.* 766; *id.* 88, The Federalist, XXXI; 1 Works of Hamilton, pp. 500–501.

The reservation in the Tenth Amendment eliminates any possibility of power of the legislatures to adopt amendments granting to the national government any additional powers over the people.

The whole great struggle over the adoption of the Constitution (save only in Rhode Island, and, questionably, in New York) was not over whether a national government, a more perfect union, should be created; but over whether the Constitution as proposed should be adopted

without being first amended so as to provide expressly that the new government should have no power to acquire additional powers over the people or their rights beyond those expressly conferred on it by the original instrument, without express consent of the people. It was only by public promises that such amendments would be made that adoption by the people of the requisite nine States was secured.

Although it was generally then assumed that the power of amendment was limited by the terms of the Preamble, the importance of express limitation of the power of amendment, so that no other construction could ever be placed on it, was specifically asserted.

The first ten amendments were adopted for the express purpose of safeguarding the people forever in these respects. They must be construed accordingly. *Barron* v. *Baltimore,* 7 Pet. 243, 250; *McCulloch* v. *Maryland,* 4 Wheat. 316, 431; Winthrop, Letter of Agrippa, Feb. 5, 1788; Ford, Essays on the Constitution, p. 122; Cf. 2 Farrand, 630.

If there were such unlimited powers in a few legislatures they could override every one of the reserved rights covered by the first ten amendments; they could change the government of limited powers into one of unlimited powers; they could declare themselves hereditary rulers; they could abolish religious freedom; they could abolish free speech and even the right of the people to petition for redress; they could not only abolish trial by jury, but even the right to a day in court.

None of us believes that any such absolute powers lawfully exist in any little band of legislators exercising federal functions. Somewhere in this great charter of liberty, there is something, overlooked in these recent days, even by this Court, which stands in the way of any such despotic powers. Where and what is that provision?

The principle that such restraints existed somewhere in the instrument was declared by Chief Justice Marshall in *Marbury* v. *Madison,* 1 Cranch 137, 176.

The whole literature of the period of the adoption of the Constitution and the first ten amendments is one great testimony to the insistence that the Constitution must be so amended as to safeguard unquestionably the rights and freedom of the people so as to secure from any future interference by the new government, or any extension of its powers, matters the people had not already given into its control, unless by their own consent. Long afterwards, in *Ex parte Milligan,* 4 Wall. 2, 120, their attitude was summed up by this Court. Cf. First Message of President Washington, 1 Mess. and Papers, Richardson, 1896, 53; 1 Benton's Abr. 47; *id.* 13; *Virginia Coupon Cases,* 114 U. S. 269, 332.

The phraseology of the Tenth Amendment was deliberately altered by Congress before its submission so as expressly to prevent any possible power of legislatures to adopt amendments granting any added powers over the people and their rights, which added powers lay only in the gift of the people. Carroll's alteration of the original draft of the Tenth Amendment asserted the supreme powers of the people as distinguished from those of the States. Roger Sherman's correction pointed the Tenth Amendment directly at the amending powers granted by the Fifth Article. The reservation "to the people" did not mean acting by votes of the legislatures, but meant acting in and through constitutional conventions chosen for the purpose. For over a century this idea permeated the decisions of this Court and the declarations of our greatest constitutional lawyers. 2 Cong. Reg. 167, 421; 1 Ann. of Cong. 768; *id.* 708–715; Letter of Agrippa to the Massachusetts Convention of February 5, 1788; Ford, Essays on the Constitution, p. 122.

Had unlimited power of amendment been delegated "to the United States," all the limitations on the national power, whether express or implied, would have been meaningless. *Marbury* v. *Madison,* 1 Cranch 137, 176.

If the Tenth Amendment did not reserve to the people the sole power to adopt amendments enlarging the powers of the Federal Government over themselves and their rights, what powers were thereby reserved to the people? Their power, their one life-giving part in the government, was the power to fix, delimit and confer the powers delegated to the new government. If that power was not reserved to them, nothing was "reserved to the people."

All the characteristic rights of freemen, subject only to the power of amendment, were, but for this power of amendment, safeguarded by the first nine amendments. That subject of rights had been exhausted, and so the Tenth Amendment drops the subject of rights and deals expressly and solely with powers, and, by Roger Sherman's correction, specifically with the power of amendment. This provision that only the people can surrender their rights or grant further powers over themselves, is the vital clause that makes this a government by the people.

That the amendments were adopted to put an end to the possibility of encroachments by the general government, and to prevent any exercise of governmental functions in a manner dangerous to liberty, Marshall declared in *Barron* v. *Baltimore,* 7 Pet. 243, 250. And this was long afterwards reiterated in *Ex parte Milligan,* 4 Wall. 2, 119–120. These declarations of the Supreme Court reach their culmination in *Turner* v. *Williams,* 194 U. S. 279, 295; and *Kansas* v. *Colorado,* 206 U. S. 46, 89–90.

The provisions of Article V did not declare that the legislatures would be agents or representatives of the people in voting on amendments. The people, if called on to act,

would act in conventions. The method of adoption by legislatures was an alternative method of adoption without referring the amendment to the people. This was the understanding at the time and was expressly declared in connection with the reservation "to the people" made by the Tenth Amendment. *Leser* v. *Garnett,* 258 U. S. 130, failed to note the reservation to the people by the 10th Amendment, and naturally so, since the Court was there dealing with powers lying in the gift of the States.

In this case of the Eighteenth Amendment, especially, the legislatures could not claim to act in behalf of or as representatives of the people, because it was expressly proposed "to the States," and not to the people. It is the only amendment of which this is true.

The rulings in *Hawke* v. *Smith, No. 1,* 253 U. S. 221, and *Leser* v. *Garnett,* 258 U. S. 130, are inconsistent with any theory that the legislatures, in voting on constitutional amendments, are acting as representatives of the people.

Where an amendment is expressly proposed to the States for adoption, and the people of the States are not permitted any possible voice or control in the matter of adoption by their legislature, it is a misuse of terms to say that the people have adopted the amendment, or that the people have, through a legislature over which they are permitted no control, exercised their own reserved power to grant added governing powers over themselves.

No other amendment to the Constitution has involved the question here presented, nor will the validity of any of the other amendments be impaired by an affirmance in this case.

The question of power now presented has not been argued to or considered by this Court. It has been passed *sub silentio* in all previous cases dealing with the Eighteenth Amendment. And they do not conclude this ques-

tion. Distinguishing: *Hawke* v. *Smith, No. 1,* 253 U. S. 221; *National Prohibition Cases,* 253 U. S. 350; *Dillon* v. *Gloss,* 256 U. S. 368.

By special leave of Court, briefs were filed by *Mr. Eliot Tuckerman, Mr. William H. Crichton-Clarke,* and *Mr. Jeremiah M. Evarts,* as *amici curiae.*

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The United States prosecutes this appeal from an order of the District Court (U. S. C., Tit. 18, § 682; Tit. 28, § 345) quashing an indictment which charged appellees with unlawful transportation and possession of intoxicating liquors in violation of § 3 of Title II of the National Prohibition Act (U. S. C., Tit. 27, § 12).

That court held that the Eighteenth Amendment by authority of which the statute was enacted has not been ratified so as to become part of the Constitution.

The appellees contended in the court below, and here, that notwithstanding the plain language of Article V, conferring upon the Congress the choice of method of ratification, as between action by legislatures and by conventions, this Amendment could only be ratified by the latter.

They say that it was the intent of its framers, and the Constitution must, therefore, be taken impliedly to require, that proposed amendments conferring on the United States new direct powers over individuals shall be ratified in conventions; and that the Eighteenth is of this character. They reach this conclusion from the fact that the framers thought that ratification of the Constitution must be by the people in convention assembled and not by legislatures, as the latter were incompetent to surrender the personal liberties of the people to the new na-

tional government. From this and other considerations, hereinafter noticed, they ask us to hold that Article V means something different from what it plainly says.

In addition they urge, that if there be any doubt as to the correctness of their construction of Article V, the Tenth Amendment removes it.

The District Court refused to follow this reasoning. It quashed the indictment, not as a result of analysis of Article V and Amendment X, but by resorting to "political science," the "political thought" of the times, and a "scientific approach to the problem of government." These, it thought, compelled it to declare the convention method requisite for ratification of an amendment such as the Eighteenth. The appellees do not attempt to justify the lower court's action by the reasons it states, but by resubmitting to us those urged upon that court and by it rejected.

The United States asserts that Article V is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses; or, on the application of the legislatures of two-thirds of the States, must call a convention to propose them. Amendments proposed in either way become a part of the Constitution, "when ratified by the legislatures of three-fourths of the several States or by conventions in three-fourths thereof, *as the one or the other mode of ratification may be proposed by the Congress.* . . . "

The choice, therefore, of the mode of ratification, lies in the sole discretion of Congress. Appellees, however, point out that amendments may be of different kinds, as, *e. g.*, mere changes in the character of federal means or machinery, on the one hand, and matters affecting the liberty of the citizen on the other. They say that the

framers of the Constitution expected the former sort might be ratified by legislatures, since the States as entities would be wholly competent to agree to such alterations, whereas they intended that the latter must be referred to the people because not only of lack of power in the legislatures to ratify, but also because of doubt as to their truly representing the people. Counsel advert to the debates in the convention which had to do with the submission of the draft of the Constitution to the legislatures or to conventions, and show that the latter procedure was overwhelmingly adopted. They refer to many expressions in contemporary political literature and in the opinions of this court to the effect that the Constitution derives its sanctions from the people and from the people alone. In spite of the lack of substantial evidence as to the reasons for the changes in statement of Article V from its proposal until it took final form in the finished draft, they seek to import into the language of the Article dealing with amendments, the views of the convention with respect to the proper method of ratification of the instrument as a whole. They say that if the legislatures were considered incompetent to surrender the people's liberties when the ratification of the Constitution itself was involved, *a fortiori* they are incompetent now to make a further grant. Thus, however clear the phraseology of Article V, they urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, "as the one or the other mode of ratification may be proposed by the Congress, as may be appropriate in view of the purpose of the proposed amendment." This can not be done.

The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition. *Martin*

v. *Hunter's Lessee,* 1 Wheat. 304; *Gibbons* v. *Ogden,* 9 Wheat. 1; *Brown* v. *Maryland,* 12 Wheat. 419; *Craig* v. *Missouri,* 4 Pet. 410; *Tennessee* v. *Whitworth,* 117 U. S. 139; *Lake County* v. *Rollins,* 130 U. S. 662; *Hodges* v. *United States,* 203 U. S. 1; *Edwards* v. *Cuba R. Co.,* 268 U. S. 628; *The Pocket Veto Case,* 279 U. S. 655; Story on the Constitution (5th ed.) § 451; Cooley's Constitutional Limitations (2nd ed.), pp. 61, 70.

If the framers of the instrument had any thought that amendments differing in purpose should be ratified in different ways, nothing would have been simpler than so to phrase Article V as to exclude implication or speculation. The fact that an instrument drawn with such meticulous care and by men who so well understood how to make language fit their thought does not contain any such limiting phrase affecting the exercise of discretion by the Congress in choosing one or the other alternative mode of ratification is persuasive evidence that no qualification was intended.

This Court has repeatedly and consistently declared that the choice of mode rests solely in the discretion of Congress. *Dodge* v. *Woolsey,* 18 How. 331, 348; *Hawke* v. *Smith (No. 1),* 253 U. S. 221; *Dillon* v. *Gloss,* 256 U. S. 368; *National Prohibition Cases,* 253 U. S. 350. Appellees urge that what was said on the subject in the first three cases cited is *dictum.* And they argue that although in the last mentioned it was said the "Amendment *by lawful proposal and ratification,* has become part of the Constitution," the proposition they now present was not before the Court. While the language used in the earlier cases was not in the strict sense necessary to a decision, it is evident that Article V was carefully examined and that the Court's statements with respect to the power of Congress in proposing the mode of ratifi-

cation were not idly or lightly made. In the *National Prohibition Cases,* as shown by the briefs, the contentions now argued were made—the only difference between the presentation there and here being one of form rather than of substance.

The Tenth Amendment provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Appellees assert this language demonstrates that the people reserved to themselves powers over their own personal liberty, and that the legislatures are not competent to enlarge the powers of the federal government in that behalf. They deduce from this that the people never delegated to the Congress the unrestricted power of choosing the mode of ratification of a proposed amendment. But the argument is a complete *non sequitur.* The Fifth Article does not purport to delegate any governmental power to the United States, nor to withhold any from it. On the contrary, as pointed out in *Hawke* v. *Smith* (*No. 1*), *supra,* that Article is a grant of authority by the people to Congress, and not to the United States. It was submitted as part of the original draft of the Constitution to the people in conventions assembled. They deliberately made the grant of power to Congress in respect to the choice of the mode of ratification of amendments. Unless and until that Article be changed by amendment, Congress must function as the delegated agent of the people in the choice of the method of ratification.

The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified and has

no limited and special operation, as is contended, upon the people's delegation by Article V of certain functions to the Congress.

The United States relies upon the fact that every amendment has been adopted by the method pursued in respect of the Eighteenth. Appellees reply that all these save the Eighteenth dealt solely with governmental means and machinery rather than with the rights of the individual citizen. But we think that several amendments touch rights of the citizens, notably the Thirteenth, Fourteenth, Fifteenth, Sixteenth and Nineteenth, and in view of this, weight is to be given to the fact that these were adopted by the method now attacked. *The Pocket Veto Case, supra.*

For these reasons we reiterate what was said in the *National Prohibition Cases, supra,* that the "Amendment by lawful proposal and ratification, has become a part of the Constitution."

The order of the court below is

Reversed.

The CHIEF JUSTICE took no part in the consideration or decision of this case.

ISAACS, TRUSTEE IN BANKRUPTCY OF THE ESTATE OF HENRIETTA E. CUNNINGHAM, BANKRUPT, *v.* HOBBS TIE & TIMBER COMPANY.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 72. Argued January 23, 26, 1931.—Decided February 24, 1931.

1. Upon an adjudication of bankruptcy the title to and constructive possession of land belonging to the bankrupt and situate in another State vest in the trustee as of the date of the filing of the peti-